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China's Fault-Based Framework for Online Platform Liability in Intellectual Property Infringement: Judicial Practice, Algorithmic Governance and Civil Law Perspectives

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Abstract

This article examines when online platforms in China become civilly liable for intellectual property (IP) infringement committed by their users. Focusing on tort fault rather than on procedure alone, it reconstructs the liability framework formed by Articles 1194 - 1197 of the Civil Code, Articles 41 - 45 of the E-Commerce Law, the Regulations on the Protection of the Right of Network Dissemination of Information and the judicial interpretations of the Supreme People's Court. The study combines doctrinal analysis with a purposive review of nine landmark judgments decided between 2011 and 2025, coded against a fixed set of liability factors, and official court statistics for 2020-2024, which are used as context. Chinese courts accepted between 526,000 and 643,000 IP cases a year in this period, and copyright disputes made up 54.9% of first-instance civil IP cases in 2024. The analysis shows that liability turns on a duty of care scaled to the platform's capacity and benefit, actual or constructive knowledge, and the timeliness and effectiveness of necessary measures. Its scope depends on the route: under the notice rules of Civil Code Article 1195 and E-Commerce Law Article 42, joint liability is expressly confined to the enlarged part of the damage, whereas the knowledge rules of Articles 1197 and 45 contain no

such limitation. Courts treat repeat infringement, targeted recommendation and direct economic benefit as evidence that a platform should have known of infringement, and the selected cases include substantial awards of up to RMB 60 million against content platforms. Compared with the United States, where DMCA safe harbours operate as separate defences alongside a contributory-liability rule that Cox v. Sony (2026) confined to inducement or services tailored to infringement, and with the ex ante due-diligence regime of the European Union's Digital Services Act, China occupies a fault-based intermediate position. Early generative-AI decisions differ in liability basis: one treated the provider as a direct infringer and assessed fault only for damages, while another applied the knowledge-and-omission analysis to a platform that assisted users. The article proposes targeted refinements: codified duty-of-care factors, objective indicators of constructive knowledge, clearer rules on the scope of joint liability, and evidentiary rules for platform-held data.

Subject Areas

Sociology

Keywords

Platform Liability, Intermediary Liability, Duty of Care,
Notice and Necessary Measures, Algorithmic Recommendation,
Generative AI, Chinese Tort Law

1. Introduction

Online platforms have become the main infrastructure through which creative works and branded goods reach consumers in China. By December 2025 China had 1.125 billion internet users, and as early as June 2024 short-video services alone reached 1.05 billion users, or 95.5% of the online population [1] [2]. The same scale that lowers distribution costs also lowers the cost of infringement. Unauthorized clips of films and drama series, pirated literature and counterfeit goods can be uploaded and multiplied within hours, while the uploaders are often anonymous, judgment-proof or located abroad [3]. Customs-seizure data suggest that counterfeit goods alone accounted for about USD 467 billion, or 2.3% of world imports, in 2021 [4]. Attention has therefore turned to the intermediaries that host, organize and recommend this content.

Platforms are rarely the direct infringers. They do not themselves reproduce the work or sell the counterfeit; they provide the environment in which users do so, while controlling that environment technically and commercially. The legal question is therefore one of allocation: when does a platform's failure to act become legally relevant fault, and for how much of the resulting damage should it answer? Different systems answer differently. The United States combines judge-made rules of secondary liability with conditional statutory safe harbours under the Digital Mil-

lennium Copyright Act (DMCA) [5]. The European Union (EU) has moved from passive hosting exemptions towards ex ante due-diligence obligations under the Digital Services Act (DSA) [6]. China has built its answer from general tort law, supplemented by sector-specific legislation and judicial interpretation[1].

Existing scholarship has examined the notice-and-takedown procedure, compared national rules or analysed particular platform types [7]-[9]. Comparative work has shown that Chinese courts infer constructive knowledge from factors such as the popularity of the work, repeat infringement and the platform's benefit, and impose a higher duty of care for popular films and dramas [10]. More recent studies address recommender systems and generative artificial intelligence (AI). Huang and Lu argue that recommender-driven short-video platforms strain safe-harbour rules designed for passive hosting and propose tiered duties; they also report that Chinese courts have reached inconsistent results on whether recommendation shows that a platform 'should have known' of infringement, and that the evidential threshold and the meaning of 'well-known works' remain undefined [11]. Studies of the generative-AI decisions disagree on their significance. You and Luo read the Guangzhou Ultraman judgment as close to strict liability for output and the Hangzhou judgments as a move towards a safe-harbour approach [12]; Zhang, Fan and Guo leave open how liability should be divided between prompting users and service providers [13]; and Bobylev identifies a multifactor assessment in the Hangzhou Internet Court's practice [14]. Three doctrinal questions therefore remain unresolved: whether the notice-based and knowledge-based routes to platform liability differ in the scope of damage for which a platform answers; which objective facts, beyond the use of recommendation as such, justify an inference of constructive knowledge; and whether generative-AI providers should be analysed as direct infringers or under the same knowledge-and-omission framework as hosting platforms. This article addresses these questions. It argues that China's fault-based model is coherent and adaptable, that recent case law already absorbs algorithmic risk through existing tort concepts, and that targeted clarification, rather than structural reform, is the appropriate response to the remaining uncertainty.

The article makes three contributions. It reconstructs the Chinese framework as an integrated fault-based system built on duty of care, knowledge and necessary measures, distinguishes the scope of liability under the notice and knowledge routes, and shows how each element is applied in practice. It supplements doctrinal analysis with contextual data on caseloads and on remedies in selected cases, which have been largely absent from English-language discussion of the subject.

[1]National People's Congress (2020) Civil Code of the People's Republic of China. Adopted 28 May 2020, Effective 1 January 2021, Book VII (Tort Liability), Arts. 1165, 1194-1197. https://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html
Standing Committee of the National People's Congress (2018) E-Commerce Law of the People's Republic of China. Adopted 31 August 2018, Effective 1 January 2019, Arts. 41-45. http://www.npc.gov.cn/npc/xinwen/2018-08/31/content_2060172.htm

And it situates China between the U.S. and EU regimes using the most recent developments in each, including the U.S. Supreme Court's 2026 decision in Cox v. Sony and the EU's Digital Services Act, before proposing refinements that preserve the system's fault-based foundations.

Methodologically, the study combines three elements. First, doctrinal analysis of the Civil Code, the E-Commerce Law, the Regulations on the Protection of the Right of Network Dissemination of Information and the relevant judicial interpretations of the Supreme People's Court (SPC). Second, a structured review of nine landmark judgments decided between 2011 and 2025. Cases were selected purposively because they were published by the SPC as guiding cases, were released by courts as typical cases, were the first rulings on a new issue, or produced the largest reported awards against platforms. Materials were retrieved from four types of source: the official text of guiding cases published by the SPC; judgments and case summaries released by the deciding courts through their official channels, including the published report of the Guangzhou Ultraman judgment [15]; case comments and analyses by academic commentators, law firms and the EU's China IP SME Helpdesk; and national press reports for cases whose full judgments were not publicly available to the authors. Each case was coded against a fixed set of variables derived from Section 2: the right infringed; the liability basis applied (direct, contributory, notice-based or knowledge-based liability); the factors relied on to establish knowledge; the measures examined; the outcome; and the amount awarded, including whether it covered reasonable expenses or punitive damages. Coding was carried out by the authors and checked against at least two independent sources where available. Where full judicial reasoning was unavailable, factors were coded only as reported in court summaries or secondary sources; the source type is identified for each case in **Table 1**, and such cases are used to illustrate remedies rather than to support conclusions about judicial reasoning. Third, official caseload statistics published by the SPC for 2020-2024[2], which are used as context only, because they are aggregated by type of right and do not identify cases involving platforms. A functional comparative method is used for the United States and the EU [16]. Section 2 sets out the doctrinal framework; Section 3 examines judicial application; Section 4 compares China with the United States and the EU; Section 5 addresses algorithms and AI-generated content; Section 6 proposes refinements; and Section 7 concludes.

[2]Supreme People's Court (2021) Intellectual Property Protection by Chinese Courts in 2020. Supreme People's Court of the PRC, Beijing. https://www.court.gov.cn/zixun/xiangqing/298191.html Su-preme People's Court (2022) Intellectual Property Protection by Chinese Courts in 2021. Supreme People's Court of the PRC, Beijing. https://www.court.gov.cn/zixun/xiangqing/355931.html Su-preme People's Court (2023) Intellectual Property Protection by Chinese Courts in 2022. Supreme People's Court of the PRC, Beijing. https://www.court.gov.cn/zixun/xiangqing/397182.html Su-preme People's Court (2024) Intellectual Property Protection by Chinese Courts in 2023. Supreme People's Court of the PRC, Beijing. https://www.court.gov.cn/zixun/xiangqing/430672.html Su-preme People's Court (2025) Intellectual Property Protection by Chinese Courts in 2024. Supreme People's Court of the PRC, Beijing. https://www.court.gov.cn/zixun/xiangqing/462871.html

2. Doctrinal Foundations of Platform Liability in China

2.1. Statutory Architecture

Platform liability in China is not an autonomous regime but an application of general tort principles. Article 1165 of the Civil Code makes fault the default basis of tort liability, and Articles 1194 - 1197 apply that principle to network service providers[3]. Article 1194 makes users and providers liable for their own infringements. Article 1195 establishes the notice rule: a right holder may notify the provider, which must forward the notice and take necessary measures such as deletion, blocking or disconnecting links; a provider that fails to act in time is jointly and severally liable with the user for the enlarged part of the damage. Article 1196 introduces the counter-notice, and Article 1197 imposes joint and several liability where the provider knew or should have known of the infringement and failed to take necessary measures; unlike Article 1195, it does not limit that liability to the enlarged part of the damage.

Sector-specific rules refine this structure. Articles 41 - 45 of the E-Commerce Law replicate the notice, counter-notice and knowledge rules for marketplaces, add a 15-day window within which the right holder must file a complaint or lawsuit after a counter-notice, and impose double damages for malicious notices[4]. For copyright, the Regulations on the Protection of the Right of Network Dissemination of Information provide safe harbours for storage, search and linking services[5], and the SPC's 2012 Provisions on network dissemination disputes list the factors from which knowledge may be inferred[6]. In 2020 the SPC added an Official Reply on network-related IP disputes and Guiding Opinions on e-commerce platforms, which clarify the content of a valid notice and the treatment of erroneous or malicious notices[7]. **Figure 1** places these instruments, together with the more recent algorithm and AI rules discussed in Section 5, on a single timeline.

As **Figure 1** shows, the framework developed incrementally. Each new instrument refined the same fault-based core rather than replacing it, and the most recent rules on algorithms and generative AI regulate conduct without displacing tort liability.

[3]Civil Code of the People's Republic of China (2020), see note 1.

[4]E-Commerce Law of the People's Republic of China (2018), see note 1.

[5]State Council (2006) Regulations on the Protection of the Right of Network Dissemination of Information. Revised 2013, Arts. 14-23.
https://www.gov.cn/gongbao/content/2013/content_2339513.htm

[6]Supreme People's Court (2012) Provisions on Several Issues concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Dissemination on Information Networks (Fa Shi [2012] No. 20). Effective 1 January 2013, Amended 2020.
https://www.wipo.int/wipolex/en/legislation/details/22131

[7]Supreme People's Court (2020) Official Reply on Issues concerning the Application of Law in Disputes over Network-Related Intellectual Property Infringement (Fa Shi [2020] No. 9).
https://www.wipo.int/wipolex/edocs/lexdocs/laws/zh/cn/cn451zh_1.pdf
Supreme People's Court (2020) Guiding Opinions on the Trial of Intellectual Property Disputes Involving E-Commerce Platforms (Fa Fa [2020] No. 32).
https://www.court.gov.cn/fabu/xiangqing/254931.html

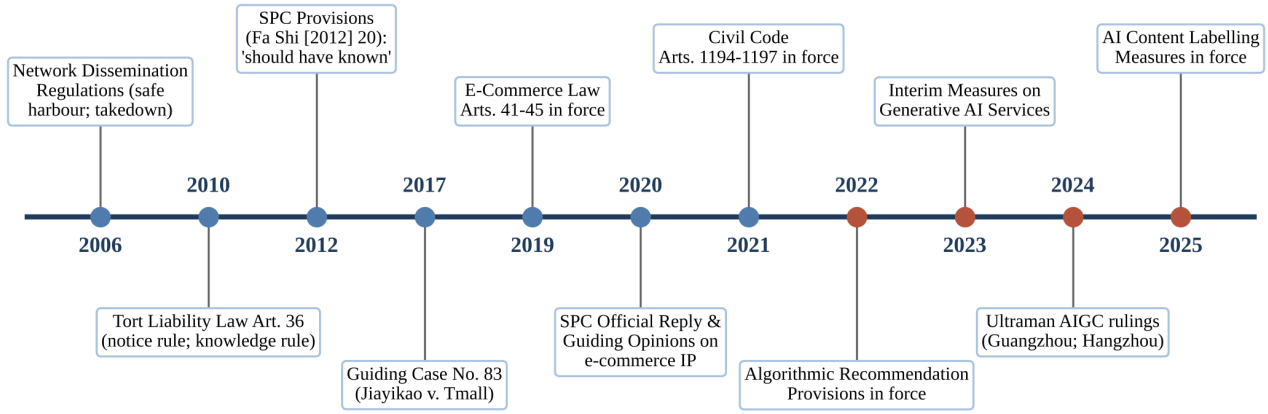


Figure 1. Development of China's platform liability framework, 2006-2025. Compiled by the authors from the instruments and judgments cited in the text.

2.2. Duty of Care as the Core Standard

The duty of care is the standard against which a platform's conduct is measured. Chinese law rejects a general monitoring obligation: Article 8 of the 2012 Provisions states that a provider's failure to review user content proactively does not by itself establish fault, and that a provider which has adopted reasonable and effective technical measures but still could not discover the infringement is not at fault[8]. The duty is instead proportional. Courts consider the nature of the service, the platform's capacity to manage information, the popularity of the work and the likelihood of infringement. Article 11 of the 2012 Provisions requires a higher duty of care where the provider obtains direct economic benefit from specific works, for example by placing advertisements against them[9].

This proportionality reflects the view that large platforms act as organizers of a market rather than neutral conduits. Platforms set the rules, design the interface and rank the content through which users interact [17]. The more control a platform exercises and the more it profits from particular content, the more it is expected to do. Courts nevertheless stress that the standard is one of reasonable conduct, not of an infringement-free outcome.

In practice, courts apply the duty of care at three levels. At the level of service type, a platform that only provides network access or caching owes a lighter duty than a hosting or marketplace service, which in turn owes less than a platform that edits, ranks or recommends content. At the level of content, the duty increases for works that are popular, recently released or obviously professional in origin, such as complete episodes of a drama on release, because their infringing nature is apparent without specialist assessment. At the level of conduct, the duty increases where the platform profits directly from specific content or has already received complaints concerning the same user or work. These levels interact: a large short-

[8]SPC Provisions on Network Dissemination Disputes (Fa Shi [2012] No. 20), see note 6.
[9]SPC Provisions on Network Dissemination Disputes (Fa Shi [2012] No. 20), see note 6.

video platform that algorithmically recommends clips of a newly released drama on which it earns advertising revenue faces the highest expectations.

Recent regulation has added governance expectations that inform this analysis. The Measures for the Supervision and Administration of Online Transactions require marketplace operators to establish platform rules, complaint procedures and records of their handling, while the Algorithmic Recommendation Provisions and the generative-AI rules require internal review systems, complaint channels and content labelling[10]. These obligations are enforced primarily through administrative supervision and do not themselves create civil liability. Their significance for tort law is evidentiary: a platform that has implemented them can more easily demonstrate reasonable care, while a platform that has ignored them will struggle to rebut an inference of fault.

2.3. Actual and Constructive Knowledge

Knowledge links conduct to fault. Actual knowledge is usually established by a valid notice. Under Guiding Case No. 83, a notice is valid if it identifies the right holder, the allegedly infringing content and preliminary evidence of infringement; a platform may not insist on a detailed technical comparison before acting [18]. Constructive knowledge, the "should have known" standard, is inferred from objective circumstances. Article 9 of the 2012 Provisions lists the relevant factors: the platform's information management capacity; the type, popularity and obviousness of the infringing material; whether the platform selected, edited, modified or recommended the work; whether it took reasonable preventive measures; whether it provided a convenient notice procedure; and whether it took reasonable measures against repeat infringement by the same user[11]. Articles 10 and 12 add that recommending popular works through rankings, catalogues or prominent positions may justify a finding of constructive knowledge.

Constructive knowledge is not an independent ground of liability. It is an evaluative device for deciding whether the duty of care has been met. A platform that lacks an accessible complaint channel, ignores repeat infringers or actively promotes obviously infringing content is likely to be found to have known what a reasonable operator in its position would have known.

The interaction between the two forms of knowledge is important. Notices are not merely a trigger for removal; they also accumulate. A platform that receives

[10]State Administration for Market Regulation (2021) Measures for the Supervision and Administration of Online Transactions. Effective 1 May 2021.
https://www.gov.cn/zhengce/zhengceku/2021-03/16/content_5593226.htm
Cyberspace Admin-istration of China, Ministry of Industry and Information Technology, Ministry of Public Security and State Administration for Market Regulation (2021) Provisions on the Administration of Algo-rithmic Recommendation of Internet Information Services. Effective 1 March 2022.
https://www.cac.gov.cn/2022-01/04/c_1642894606364259.htm
Cyberspace Administration of China et al. (2023) Interim Measures for the Administration of Generative Artificial Intelligence Services. Effective 15 August 2023.
https://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm
[11]SPC Provisions on Network Dissemination Disputes (Fa Shi [2012] No. 20), see note 6.

repeated valid notices about the same account, the same work or the same category of goods acquires knowledge that extends beyond the specific items notified. Courts have relied on this accumulation to find that a platform should have known of further infringement by the same user, even where no notice identified the later items. Conversely, a platform is not required to treat every unverified complaint as conclusive. The Guiding Opinions on e-commerce platforms allow operators to set different notice requirements for different types of rights, and Article 42 of the E-Commerce Law exposes those who send erroneous notices to liability for the resulting loss[12]. Knowledge is therefore judged by what a reasonable operator would infer from the information available, not by the mere fact that an allegation was made.

2.4. Necessary Measures and the Scope of Liability

Once a platform has knowledge, it must take necessary measures. Guiding Case No. 83 established that these measures are not limited to deletion: forwarding the notice to the seller is itself a necessary measure, and the appropriate response depends on the type of right and the platform's ability to assess infringement [18]. The statutes then distinguish two routes to liability that differ in scope. Under the notice rule, Article 1195 of the Civil Code and Article 42 of the E-Commerce Law expressly provide that a platform which fails to take necessary measures in time after a valid notice is jointly and severally liable with the user for the enlarged part of the damage[13]. In Guiding Case No. 83, decided under the equivalent notice rule of the former Tort Liability Law, Tmall was held jointly liable for RMB 50,000, representing the loss attributable to its failure to forward the notice [18]. Under the knowledge rule, by contrast, Article 1197 of the Civil Code and Article 45 of the E-Commerce Law provide that a platform which knew or should have known of the infringement and failed to take necessary measures is jointly and severally liable with the user, without the enlarged-harm wording[14]. The texts therefore do not support treating the enlarged-harm limitation as a general cap on platform liability. In the knowledge-based decisions reviewed here, such as iQiyi v. ByteDance, the courts did not frame their awards as compensation for enlarged harm [19]. Whether liability under the knowledge rule extends to loss incurred before the platform knew or should have known of the infringement remains unsettled: no decision in the sample applies the enlarged-harm limitation to that route, and the authors are not aware of an SPC interpretation that resolves the point. This article therefore treats the enlarged-harm limitation as specific to the notice route. **Figure 2** summarizes the resulting analytical sequence.

[12]E-Commerce Law of the People's Republic of China (2018), see note 1; SPC Guiding Opinions on E-Commerce Platform IP Disputes (Fa Fa [2020] No. 32), see note 7.
[13]Civil Code of the People's Republic of China (2020), see note 1; E-Commerce Law of the People's Republic of China (2018), see note 1.
[14]Civil Code of the People's Republic of China (2020), see note 1; E-Commerce Law of the People's Republic of China (2018), see note 1.

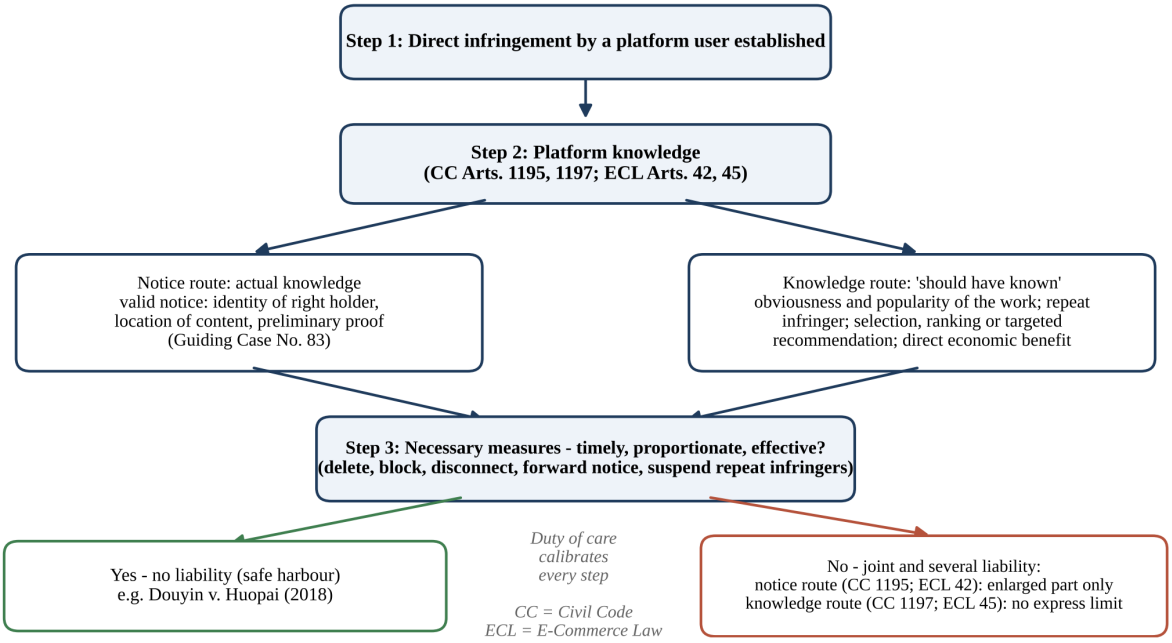


Figure 2. The fault-based analytical framework applied by Chinese courts to platform liability for user IP infringement. Prepared by the authors.

As Figure 2 indicates, the duty of care calibrates each step. It defines what a platform should have known, what measures were necessary and how quickly they had to be taken, while the route to liability determines its scope: the enlarged part of the damage under the notice rule, and joint liability without that express limitation under the knowledge rule.

Under the notice route, the enlarged-harm rule also shapes litigation strategy. Because the platform answers only for the period after it failed to act on a valid notice, right holders have an incentive to send precise notices early and to document the platform's response, while platforms have an incentive to process notices promptly and to keep records showing when and how they acted. The rule thus aligns private incentives with the efficient allocation of enforcement effort. It also explains why awards in notice-based cases are often smaller than the total loss caused by the direct infringer. Because the knowledge rule lacks the same wording, a right holder able to prove that a platform should have known of infringement before any notice may have a broader claim, which gives right holders an incentive to document indicators of constructive knowledge as well as notices.

3. Judicial Application: Evidence from Court Data and Landmark Cases

3.1. The Litigation Landscape

Aggregate caseload data provide context for the case review, although they do not identify which disputes involve platforms. Figure 3 presents SPC data on new IP cases accepted by all courts and on first-instance civil IP cases by type for 2020-2024.

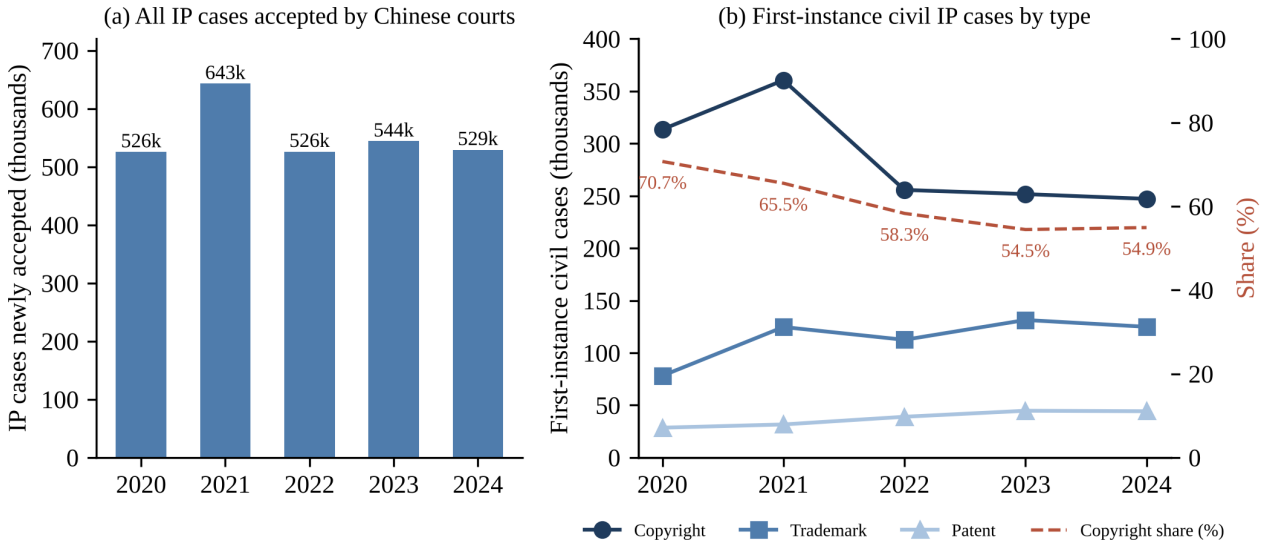


Figure 3. Intellectual property caseload of Chinese courts, 2020-2024: (a) all new IP cases accepted; (b) first-instance civil IP cases by type and the share of copyright cases. Data: SPC annual reports on IP protection by Chinese courts[15].

Figure 3(a) shows that courts accepted between 525,618 and 642,968 new IP cases each year, with 529,370 cases in 2024[16]. **Figure 3(b)** shows that copyright remains the largest category of first-instance civil IP disputes, although its share fell from 70.7% (313,497 of 443,326 cases) in 2020 to 54.9% (247,149 of 449,923 cases) in 2024, while trademark cases rose from 78,157 to 124,918 and patent cases from 28,528 to 44,255[17]. The SPC reports do not break these totals down by medium of infringement or by type of defendant, so they cannot show how many disputes concern online infringement or involve a platform; they indicate only the overall scale of IP litigation within which platform cases arise. Punitive damages were applied in 460 IP cases in 2024, an increase of 44.2% on 2023[18], a change that concerns IP litigation generally rather than platform cases specifically.

Litigation is only the visible part of enforcement. Large platforms now process most complaints internally, and their self-reported figures indicate the scale of private governance that sits behind the court data. Alibaba, for example, reported that in 2020 it proactively detected and removed 96% of suspected infringing listings before any sale was made and handled 98% of IP complaints within 24 hours [20]. Such figures are not independently audited and should be read with caution, but they illustrate that the reasonableness of a platform's conduct is increasingly judged against industry practice: if leading platforms can respond within a day, a

[15]Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2020, see note 2. Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2021, see note 2. Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2022, see note 2. Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2023, see note 2. Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2024, see note 2.
[16]Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2024, see note 2.
[17]Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2020, see note 2. Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2024, see note 2.
[18]Supreme People's Court, Intellectual Property Protection by Chinese Courts in 2024, see note 2.

platform that takes weeks to act on a clear notice will find it difficult to argue that its response was timely.

3.2. Landmark Cases

Table 1 codes nine landmark judgments according to the liability factors identified in Section 2. The selection is purposive rather than statistical: it captures the cases that courts and commentators treat as establishing or illustrating the governing rules. Coding follows the scheme described in Section 1, and the final column identifies the type of source on which it relied.

Table 1. Landmark Chinese platform liability cases coded by liability basis and decisive factors (2011-2025).

Case	Court and year	Right	Liability basis and decisive factors	Outcome	Source
Yinian v. Taobao and Du Guofa [21]	Shanghai No. 1 Intermediate Court, 2011	Trademark	Knowledge route: seven notices against same seller; deletion only; repeat infringement	Platform jointly liable	S
Jiayikao v. Tmall (Guiding Case No. 83) [18]	Zhejiang High Court, 2015 (published 2017)	Patent	Notice route: valid notice; failure to forward notice to seller	Liable for enlarged harm, RMB 50,000	O
Douyin v. Baidu (Huopai) [22]	Beijing Internet Court, 2018	Copyright	Notice route: prompt deletion after notice	Not liable (safe harbour)	C
iQiyi v. ByteDance (Story of Yanxi Palace) [19]	Haidian District Court, 2021	Copyright	Knowledge route: recommendation of popular drama; measures ineffective and untimely	Contributory liability, RMB 2 million	S
Ultraman (text-to-image) [23]	Guangzhou Internet Court, 2024	Copyright	Direct infringement (reproduction, adaptation); duty-of-care failures relevant to fault for damages	Direct liability, RMB 10,000; prompt blocking	O
Ultraman (LoRA models) [24]	Hangzhou Internet Court; affirmed by Hangzhou Intermediate Court, 2024	Copyright	Direct infringement rejected; knowledge route: famous work, prominent recommendation, stable output, direct profit	Contributory liability, RMB 30,000	C
The Knockout [25]	Jiangsu High Court, 2025	Copyright	Basis not reported; large-scale infringing clips	Full claim awarded, RMB 30 million	P
Lost You Forever [25]	Chongqing High Court, 2025	Copyright	Basis not reported; systematic infringement; punitive damages; filtering ordered	RMB 29.1 million	P
Deyun Dou Xiao She [25]	Guangdong High Court, 2025	Copyright	Basis not reported; systematic infringement; punitive damages; filtering ordered	RMB 60 million	P

Note: Source: O = official text or published report of the judgment; C = court release or summary with secondary commentary; S = case comment or secondary reports quoting the judgment; P = press report only (platform not named).

Three patterns emerge from Table 1. First, repeat infringement is decisive. In Yinian v. Taobao, the right holder sent seven notices about the same seller; Taobao deleted the listings each time but took no further step against the seller. The Shanghai No. 1 Intermediate People's Court held that deletion alone was insufficient where the platform knew of continuing infringement by an identified user, and found Taobao jointly liable [21] [26]. The decision anticipated the repeat-infringer factor later written into Article 9 of the 2012 Provisions.

Second, a platform that responds promptly is protected. In Douyin v. Huopai, the first case decided by the Beijing Internet Court, the court accepted that a 15-second user video could be protected as a work, but dismissed the claim against Baidu's Huopai platform because it deleted the video promptly after notice [22]. The safe harbour therefore operates as intended where the platform's conduct is reasonable.

Third, courts increasingly judge necessary measures by their effect rather than their form. In iQiyi v. ByteDance, which concerned clips of the drama Story of Yanxi Palace distributed through the Toutiao app, the Haidian District People's Court held on 21 December 2021 that a platform providing information-flow recommendation owed a higher duty of care than a pure storage provider [19] [27]. Because large volumes of infringing clips continued to appear after ByteDance claimed to have adopted copyright measures, and because its handling of complaints was not timely, the measures did not meet the standard of effective prevention. ByteDance was held liable for contributory infringement and ordered to pay RMB 1.5 million in damages and RMB 0.5 million in reasonable expenses [19] [28].

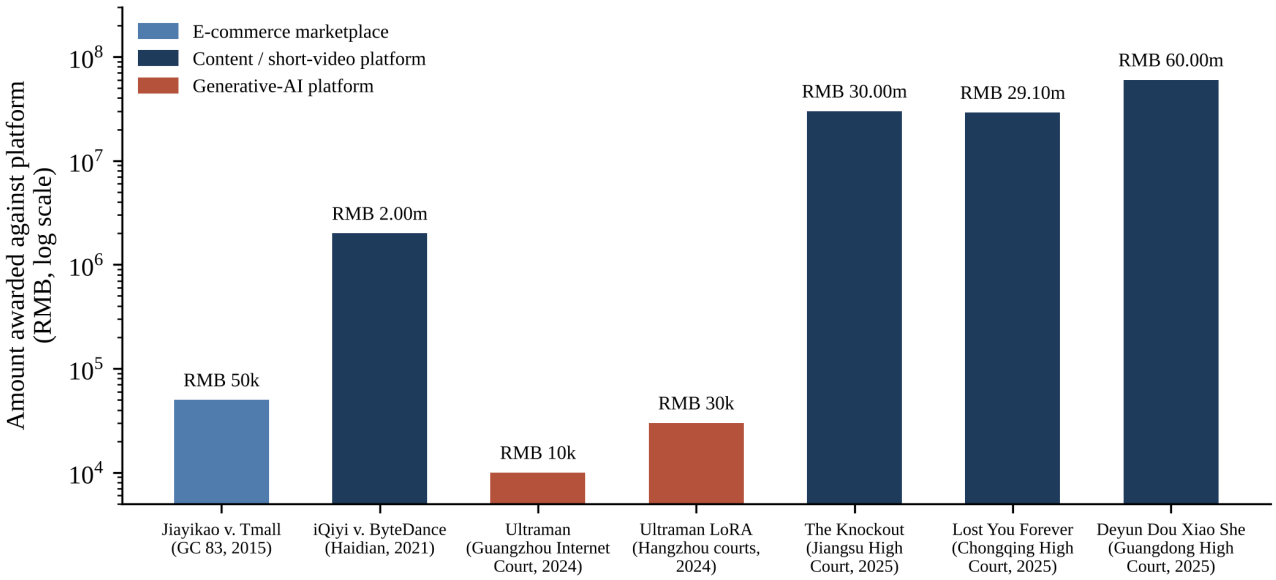
Two further points arise from Table 1. The notice-based and knowledge-based decisions apply the same analytical sequence across different rights and platforms: trademark and patent disputes on marketplaces and copyright disputes on short-video and AI platforms are resolved by asking what the platform knew, what it should have done and whether its omission caused or enlarged the harm. The Guangzhou Ultraman judgment, discussed in Section 5.2, is the exception, because it treated the service provider as a direct infringer. This consistency supports the claim that the framework is coherent rather than ad hoc. At the same time, the content of the duty varies considerably with the service. The forwarding of a notice sufficed for Tmall in a patent case requiring technical comparison, whereas ByteDance's deletion measures were insufficient for clips of a popular drama whose infringing character was obvious. Proportionality, rather than a uniform rule, determines what is necessary in each case.

3.3. Remedies in Selected Cases and Doctrinal Implications

Figure 4 compares the amounts awarded against platforms in the landmark cases in Table 1.

As Figure 4 shows, the selected cases include substantial awards against content platforms. In 2025 the Guangdong and Chongqing High People's Courts ordered

a short-video platform to pay RMB 60 million and RMB 29.1 million respectively for the unlicensed dissemination of a variety show and a drama series, applying punitive damages and ordering filtering and blocking measures; an earlier Jiangsu High People's Court judgment had awarded the full RMB 30 million claimed for The Knockout [25]. These figures do not show a general increase in judicial severity. Three of the cases were included partly because their awards were exceptionally large; the cases involve different works, different scales of infringement and different components, including punitive damages and reasonable expenses; and reported awards in other platform cases of the same period were far smaller. In 2021, for example, the Beijing Intellectual Property Court and the Beijing Internet Court awarded RMB 290,000 and RMB 460,000 against Kuaishou in two disputes brought by Youku over drama clips [29], and in 2022 the Hangzhou Internet Court awarded RMB 100,000 of the RMB 4.99 million claimed against Douyin, holding that the platform had no duty of prior review [30]. Awards against generative-AI platforms in the sample are also modest. What **Table 1** and **Figure 4** do show is that the fault-based framework permits substantial remedies where large-scale infringement and the platform's failure to act are established, while leaving courts discretion to award modest sums elsewhere.



Note: Sources: as cited in **Table 1**.

Figure 4. Amounts awarded against platforms in selected landmark Chinese cases, 2015-2025 (log scale; includes reasonable expenses where reported together). The cases were selected partly for the size of their awards and differ in infringement scale and damages components; they are not a representative sample.

Evidence is a further area of development. Platforms control the transaction records, upload logs and recommendation data on which causation and enlarged harm depend. Under Article 95 of the SPC's Several Provisions on Evidence in Civil Procedure, where a party controlling evidence refuses to produce it without justification, the court may presume that its content is unfavourable to that

party[19]. Applied to platforms, this rule in practice shifts part of the evidentiary burden towards the party best able to discharge it.

The case law also displays a limitation. Published judgments are concentrated in the internet courts of Beijing, Hangzhou and Guangzhou and in the higher courts of economically developed provinces, and they tend to involve large platforms and well-resourced right holders. The principles they establish are likely to be followed elsewhere, but the evidence on how ordinary disputes involving smaller platforms are resolved remains thin. This is one reason for the refinements proposed in Section 6, which aim to make the standards applied in leading cases more accessible to lower courts and smaller market participants.

4. Comparative Analysis: The United States, the European Union and China

4.1. The United States: Safe Harbours and Secondary Liability

U.S. law separates two questions: whether a provider is secondarily liable under the judge-made doctrines of contributory and vicarious infringement, and whether it qualifies for a statutory safe harbour that limits remedies even if it would otherwise be liable. The DMCA answers only the second question. Section 512(c) shields hosting providers that lack actual knowledge or awareness of facts making infringement apparent ('red-flag' knowledge) and that act expeditiously on notice, Section 512(i) conditions every safe harbour on a policy for terminating repeat infringers, and Section 512(m) rejects any monitoring obligation [5]. Courts have read the knowledge conditions narrowly. In Viacom v. YouTube, the Second Circuit required knowledge of specific infringing items rather than general awareness [31]; in UMG v. Shelter Capital, the Ninth Circuit applied the same reasoning to a video platform [32]; and in Tiffany v. eBay, generalized knowledge of counterfeit sales did not establish contributory trademark liability [33]. Enforcement costs are deliberately placed on right holders, which has produced very high notice volumes and recurring concerns about both under-enforcement and inaccurate notices [34] [35].

The Supreme Court has recently narrowed the underlying liability rule rather than the safe harbours. In Cox Communications v. Sony Music Entertainment, decided on 25 March 2026, the Court held that a service provider is contributorily liable for a user's copyright infringement only if it intended its service to be used for infringement, shown either by inducement or by providing a service tailored to infringement; continued service to subscribers after more than 163,000 notices did not suffice [23] [36]. The Court treated the DMCA as creating defences, not grounds of liability, and relied on Section 512(l), under which failure to qualify for a safe harbour does not bear adversely on a provider's defence that its conduct is not infringing [36] [37]. Cox therefore did not narrow statutory immunity. It

[19]Supreme People's Court (2019) Several Provisions on Evidence in Civil Procedure (Fa Shi [2019] No. 19). Effective 1 May 2020, Art. 95. https://www.court.gov.cn/fabu/xiangqing/212721.html

narrowed the substantive rule of contributory liability, with the result that repeat notices, which remain relevant to safe-harbour eligibility under Section 512(i), no longer establish contributory liability on their own. In Chinese law, by contrast, repeated notices identifying the same users would ordinarily support a finding that the platform should have known of infringement, as in Yinian v. Taobao. The contrast illustrates how far the two systems now diverge on the substantive role of knowledge.

The U.S. approach has clear advantages. It provides predictability for intermediaries, has supported the growth of large platform businesses and protects lawful expression from over-removal [38]. Its disadvantages are equally clear. Because contributory liability now requires intent, and safe-harbour protection is lost only on specific knowledge, right holders bear most of the cost of monitoring, and platforms have limited legal incentive to address infringement that they could detect but have not been specifically told about. Empirical studies of notice practice record a system dominated by automated, high-volume notices, with recurring problems of accuracy on both sides [34].

4.2. The European Union: From Neutral Hosting to Due Diligence

The EU's E-Commerce Directive provided a hosting exemption for providers without knowledge that acted expeditiously on obtaining it, and prohibited general monitoring obligations [39]. The Court of Justice limited the exemption to neutral intermediaries. In L'Oréal v. eBay, an operator that optimized or promoted offers could lose protection [40], and in YouTube and Cyando the Court held that a platform may itself communicate works to the public where it fails to act on specific knowledge or contributes beyond merely providing the platform [41]. Article 17 of the Directive on Copyright in the Digital Single Market then made large content-sharing services directly liable unless they make best efforts to obtain licences and to prevent the availability of notified works [42]. The DSA preserves the hosting exemption and the ban on general monitoring, but adds harmonized notice-and-action procedures, trusted flaggers, measures against misuse and, for very large online platforms, systemic risk assessment and mitigation [6] [43].

The EU model shifts part of the enforcement burden from right holders to platforms and makes algorithmic risk an express subject of regulation. Its strength lies in systemic oversight: large platforms must assess how their design contributes to the dissemination of illegal content and adopt mitigation measures, subject to audit and regulatory supervision. Its weaknesses lie in compliance cost and complexity, the risk of over-removal produced by preventive filtering and the danger that obligations designed for the largest platforms entrench their position relative to smaller competitors [43]. The separation between regulatory duties under the DSA and civil liability under national law also means that a breach of due-diligence obligations does not automatically translate into compensation for affected right holders.

4.3. China's Intermediate Position

Table 2 compares the three regimes across the dimensions that matter most for allocating responsibility.

Table 2. Comparison of platform liability regimes in the United States, the European Union and China.

Dimension	United States	European Union	China
Legal basis	Judge-made contributory and vicarious liability; DMCA §512 safe harbours as separate defences	DSA hosting exemption; DSM Directive Art. 17	Civil Code Arts. 1194-1197; E-Commerce Law Arts. 41-45; SPC interpretations
General monitoring	Expressly excluded (§512(m))	Prohibited (DSA Art. 8), except Art. 17 best efforts	Not required (2012 Provisions Art. 8)
Substantive liability standard	Contributory liability requires intent: inducement or a service tailored to infringement (Cox, 2026)	Set by national law; CJEU communication-to-the-public test for platforms	Fault: knew or should have known, or failure to act on a valid notice
Condition of immunity or exemption	Safe harbour lost on specific actual or red-flag knowledge without expeditious removal; repeat-infringer policy required (§512(i))	Exemption lost on actual knowledge or awareness, or loss of neutrality	Copyright safe harbours unavailable where provider knew or should have known
Role of repeat notices	Insufficient alone for contributory liability (Cox); relevant to safe-harbour eligibility (§512(i))	Relevant to knowledge and misuse measures	Strong evidence of constructive knowledge
Differentiation by size	Limited	Ex ante obligations for very large platforms	Ex post duty of care scaled to capacity and benefit
Scope of liability	Liability only if substantive standard met; losing a safe harbour does not itself create liability (§512(l))	Liability under national law if exemption lost	Notice route: joint liability for enlarged harm; knowledge route: joint liability without that express limit
Algorithms	Largely treated as neutral tools	Systemic risk assessment of recommender systems	Targeted recommendation raises duty of care and supports 'should have known'

As Table 2 indicates, China shares with the United States a fault-based, knowledge-triggered structure and a rejection of general monitoring. It shares with the EU a recognition that platforms are structural actors whose design choices affect infringement risk, and it scales obligations to platform capacity. It differs from both in two respects. Unlike U.S. contributory-liability doctrine after Cox, Chinese law gives constructive knowledge a central role and allows it to be inferred from repeat notices, popularity and targeted recommendation. Unlike the EU, China achieves differentiation mainly through ex post judicial assessment of the duty of care rather than ex ante regulatory obligations, and on the notice route it limits liability to enlarged harm [7] [44]. This combination allows courts to respond to platform scale without imposing a uniform compliance burden on small operators.

The intermediate position also carries risks. Reliance on judicial calibration produces flexibility but can reduce predictability, especially when similar facts are decided differently by courts in different regions. The 'should have known' standard, if applied expansively, could approach a de facto monitoring obligation for large platforms; if applied restrictively, it could leave right holders without an effective remedy against platforms that profit from obvious infringement. China's model therefore depends on the quality of judicial guidance, a point to which Section 6 returns. Selectively borrowing EU-style transparency tools, such as published notice statistics and explanations of recommender systems, could strengthen this guidance without importing the full regulatory apparatus.

5. Algorithms and AI-Generated Content

5.1. Algorithmic Recommendation and the "Should Have Known" Standard

Recommendation algorithms change the factual basis of platform liability. A platform that ranks and pushes content does more than store it; it decides what users see [17] [45]. Chinese law can absorb this change without new liability rules because Article 9(3) of the 2012 Provisions already treats selection and recommendation as indicators of constructive knowledge[20]. iQiyi v. ByteDance applied this reasoning to automated recommendation. The court rejected the argument that the algorithm did not identify content and therefore involved no culpable choice, holding that a platform which profits from information-flow recommendation of popular works must take correspondingly effective preventive measures [19] [46]. Subsequent cases against short-video platforms have treated topic pages and recommendation modules built around infringing clips as recommendation under Article 10 [47]. Courts have not, however, been uniform. In Tencent v. Douyin the Hangzhou Internet Court held that a recommendation algorithm is not culpable in itself and that generic algorithmic promotion did not show knowledge, finding fault only where the platform had organized search results around the drama's title and placed them at the top [30]; scholars likewise disagree on whether recommendation as such should raise the duty of care [11]. The decisive fact is therefore targeted promotion of identifiable content, not the use of an algorithm.

Administrative regulation reinforces this approach. The Provisions on the Administration of Algorithmic Recommendation, in force since 1 March 2022, require providers to establish systems for reviewing algorithmic mechanisms and information publication (Article 7) and to review, evaluate and verify their mechanisms, models, data and outcomes regularly (Article 8)[21]. These provisions do not create IP liability, but they help define what a reasonable provider should do. A platform that cannot show such review processes will find it harder to argue that it took reasonable preventive measures within the meaning of Article 9(4) of the 2012 Provisions.

[20]SPC Provisions on Network Dissemination Disputes (Fa Shi [2012] No. 20), see note 6.

[21]Provisions on the Administration of Algorithmic Recommendation of Internet Information Services (2021), see note 10.

5.2. Generative-AI Platforms

Generative AI raises a further question: whether a platform whose system itself produces infringing output is a direct infringer, a contributory infringer or neither. The Interim Measures for the Administration of Generative AI Services, effective 15 August 2023, require providers to respect IP rights, establish complaint and reporting mechanisms (Article 15) and label generated content[22]; the Measures for Labelling AI-Generated Synthetic Content, effective 1 September 2025, add explicit and implicit labelling duties[23].

The two Ultraman decisions rest on different liability bases and must be distinguished. In the Guangzhou case, decided on 8 February 2024, the plaintiff sued the operator of a text-to-image service whose system generated images substantially similar to the Ultraman character. The Guangzhou Internet Court held that the operator itself had reproduced and adapted the work without authorization, a finding of direct infringement [15] [48]. The order to stop the infringement, including blocking prompts that generated the character, followed from the infringement itself. Fault was relevant only to damages: the court held that liability to pay compensation depends on fault, and found fault in the provider's failure to meet the duties of care in the Interim Measures, namely a complaint mechanism, risk warnings to users and labelling of generated content, awarding RMB 10,000 [23] [49]. This holding supports the framework of this article only in a limited sense. It is not an application of Article 1197, but it shows the same duty-of-care benchmarks being used to measure fault for damages where the provider is a direct infringer.

The Hangzhou case concerned a different structure. Users uploaded Ultraman images, trained LoRA models on the platform and shared them, and the platform displayed the models and resulting images under its 'Recommendations' and 'IP Works' sections. The Hangzhou Internet Court rejected direct infringement because the images were uploaded and the prompts given by users, and the platform had no common intent with them to provide the work. It found contributory infringement instead, reasoning that the work was well known, the infringing content was placed in prominent positions, LoRA models allowed the character to be reproduced stably, the platform profited directly through paid membership and the models could be reused by other users, so that the platform should have known of the infringement and had failed to take reasonable preventive measures; it awarded RMB 30,000 [24] [50] [51]. The Hangzhou Intermediate People's Court upheld the judgment in December 2024 and stressed that the duty of care rises with the platform's profitability and control [51]. This holding is a direct application of the knowledge-and-omission analysis described in Section 2. In a Decem-

[22]Interim Measures for the Administration of Generative Artificial Intelligence Services (2023), see note 10.

[23]Cyberspace Administration of China, Ministry of Industry and Information Technology, Ministry of Public Security and National Radio and Television Administration (2025) Measures for Labelling Artificial Intelligence-Generated Synthetic Content. Effective 1 September 2025. https://www.cac.gov.cn/2025-03/14/c_1743654684782215.htm

ber 2025 case concerning "hallucinated" misinformation, the Hangzhou Internet Court rejected strict product liability for generative-AI output and held that a provider which had fulfilled a dynamically assessed duty of care was not at fault [52] [53]. Although that case did not concern IP, it confirms that courts assess AI providers' liability for compensation by reference to fault.

5.3. Doctrinal Assessment

These developments support four conclusions. First, algorithmic design is treated as a relevant fact, not as an independent trigger of liability. Recommendation increases foreseeability and the expected level of care, but liability still depends on knowledge, failure to act and causation. Second, internal algorithmic signals matter. If a platform's own systems repeatedly classify content or accounts as high-risk and the platform does nothing, those signals are strong evidence of constructive knowledge. Third, regulation and tort law are converging. Compliance duties under the algorithm and AI rules, such as complaint mechanisms, risk warnings and labelling, are increasingly used as benchmarks of reasonable care. Fourth, generative AI does not fit a single model: where the provider's own system generates infringing output, courts may treat it as a direct infringer and use duty-of-care benchmarks only to assess fault for damages; where users create and share infringing tools on the platform, the knowledge-and-omission analysis applies. The modest awards in the AI cases suggest that courts remain cautious about over-deterring a strategic industry.

There are, however, limits to what fault analysis can achieve in AI settings. Knowledge in an automated system is distributed across models, logs and moderation pipelines rather than held by a person, and a platform may be unable to explain why its system produced a particular output. Courts have responded by focusing on observable conduct: whether the platform provided complaint channels, warned users, labelled content, filtered prompts associated with known works and acted on notices. This conduct-based approach is workable, but it may need refinement as models become more capable of generating close imitations without explicit prompting. Questions concerning the use of copyrighted works to train models, which raise issues of direct rather than platform liability, lie beyond the scope of this article.

6. Targeted Refinements to the Framework

The analysis indicates that China's framework is fundamentally sound but leaves several points insufficiently defined. Because most of the relevant standards were developed by the SPC and refined through cases, the following refinements can largely be achieved through judicial interpretation and guiding cases rather than legislative amendment.

6.1. Codify Tiered Duty-of-Care Factors

The SPC should consolidate the factors scattered across the 2012 Provisions, the

2020 Guiding Opinions and recent judgments into a single list for all platform types: the nature of the service, degree of control over content, scale and market position, direct economic benefit from specific content, use of recommendation or ranking, technical capacity to detect infringement and the cost of preventive measures. A tiered approach would distinguish very large platforms, ordinary hosting and marketplace services, and small or non-commercial providers, giving each a clearer benchmark without fixing rigid thresholds.

6.2. Specify Objective Indicators of Constructive Knowledge

Courts should identify concrete indicators that support an inference of constructive knowledge and indicators that do not. Supporting indicators include multiple valid notices against the same account or work within a short period; re-uploads of content previously removed; algorithmic promotion of content already flagged; placement of popular, recently released works in recommended or ranked positions; and internal risk flags that were not acted upon. A general awareness that infringement occurs somewhere on a large platform should not suffice. Guiding cases illustrating both sides of the line would prevent constructive knowledge from becoming a disguised monitoring obligation.

Table 3 sets out a proposed list of such indicators, distinguishing those that should support an inference of constructive knowledge from those that should not.

Table 3. Proposed objective indicators for assessing constructive knowledge.

Indicator	Supports inference of constructive knowledge	Does not by itself support inference
Notices	Multiple valid notices on the same account or work within a short period	A single vague or unverified complaint
Repeat conduct	Re-upload of content already removed; same seller relisting goods	Unrelated infringements by different users
Platform conduct	Ranking, recommending or featuring the content; topic pages built around it	Neutral storage or automated indexing without promotion
Nature of the work	Popular, newly released or obviously professional works	Works whose infringing character requires expert assessment (e.g. invention patents)
Economic benefit	Advertising or revenue linked to the specific content	General subscription or traffic revenue
Internal signals	Own risk-classification systems flagged the content and no action followed	General awareness that infringement occurs on the platform

6.3. Clarify the Scope of Joint Liability

The scope of liability needs clarification on two points. First, the SPC should state whether liability under the knowledge rule of Civil Code Article 1197 and E-Commerce Law Article 45 extends to loss incurred before the platform knew or should have known of the infringement, or whether, like liability under the notice rule, it is confined to the period of unjustified inaction. Second, under the notice rule,

courts should state that the period of enlarged harm runs from the time a reasonable platform in the defendant's position would have acted on a valid notice, taking into account the type of right, the clarity of the notice and the speed at which the content type spreads. For short videos of popular works, whose viewing is concentrated in the first days after upload, a reasonable response time will be short; for patent complaints requiring technical assessment, forwarding the notice may be sufficient [18]. Indicative rather than fixed benchmarks would improve predictability while preserving case-by-case judgment.

Clearer rules on quantification would also help. Where losses are difficult to calculate, courts frequently award statutory damages within the limits set by the Copyright Law. Judgments should state more explicitly which portion of the award reflects the platform's period of fault, the scale of dissemination during that period and any punitive element. Greater transparency in these calculations would make outcomes more predictable and allow platforms to assess the value of faster response systems against the cost of liability.

6.4. Integrate Governance Obligations and Evidence Rules

Compliance with the algorithm and generative-AI rules should be treated as evidence of reasonable care, and non-compliance as evidence of fault, but neither should be conclusive. Because platforms hold the data needed to prove causation and enlarged harm, courts should make greater use of evidence-preservation and document-production orders and, where a platform fails to produce data within its control, draw adverse inferences. Protective orders can safeguard trade secrets in algorithm design while still allowing judicial examination.

6.5. Preserve Proportionality for Smaller Platforms

Finally, refinements should not entrench incumbents. Proactive filtering, algorithm audits and dedicated IP teams are affordable for the largest platforms but may be prohibitive for new entrants. The proportionality already embedded in Article 9 of the 2012 Provisions should be made explicit, so that smaller providers are judged by what is reasonable for their size and capacity, while the heaviest expectations remain with platforms that profit most from content and have the greatest ability to control it.

6.6. Implement Refinements through Judicial Guidance

Most of these refinements can be implemented without amending the Civil Code or the E-Commerce Law. The SPC can consolidate duty-of-care factors and constructive-knowledge indicators in a new judicial interpretation on network IP disputes, publish guiding cases that illustrate both liability and non-liability on similar facts, and issue guidance on the scope of joint liability under the notice and knowledge routes. Internet courts, which already handle a large share of platform disputes, can contribute by publishing reasoned typical cases. This incremental route is consistent with China's approach to regulating fast-moving technologies:

it allows standards to evolve with practice while avoiding premature codification of rules that technology may soon overtake.

7. Conclusions

This article has examined the conditions under which Chinese platforms are civilly liable for user IP infringement. China has not adopted a strict-liability or broad-monitoring model. It has instead built a fault-based framework from general tort law, refined by the E-Commerce Law, copyright regulations and SPC interpretations. Liability depends on a proportionate duty of care, actual or constructive knowledge, and timely and effective necessary measures. Its scope depends on the route: joint liability is expressly confined to the enlarged part of the damage under the notice rule, but not under the knowledge rule.

Judicial practice confirms both the stability and the adaptability of this framework. Court data show the scale of IP litigation within which platform disputes arise, with copyright disputes accounting for more than half of first-instance civil IP cases in 2024. Landmark judgments show courts protecting platforms that respond promptly, holding liable those that tolerate repeat infringement or rely on ineffective measures, and treating algorithmic recommendation as evidence that a platform should have known of infringement. The selected cases include substantial awards against content platforms of up to RMB 60 million in 2025, although such awards are not representative of platform litigation generally. The generative-AI cases differ in liability basis: the Guangzhou court treated the provider as a direct infringer, while the Hangzhou courts applied contributory liability based on what the platform should have known.

The study has limitations. Its case analysis relies on a purposive sample of published landmark judgments, which may not represent routine disputes; for several cases full judicial reasoning was unavailable and coding relied on court summaries or secondary reports; and some reported amounts combine damages with reasonable expenses. Caseload statistics are aggregated by right type and do not identify how many cases involve platforms specifically. The generative-AI case law is still at an early stage, and appellate guidance may develop differently from the first-instance decisions examined here. These limitations do not alter the central finding: across rights, platforms and technologies, Chinese courts resolve platform liability through a consistent fault-based analysis that is capable of adapting to technological change.

Comparatively, China occupies a distinct intermediate position. It shares the knowledge-based structure of the United States but gives constructive knowledge a far larger role than U.S. contributory-liability doctrine after Cox v. Sony, which narrowed the substantive rule while leaving the DMCA safe harbours as separate defences. It shares the EU's view of platforms as structural actors but relies on ex post judicial calibration rather than ex ante regulatory obligations. Targeted refinements, namely codified duty-of-care factors, objective indicators of constructive knowledge, clearer rules on the scope of joint liability under the notice and

knowledge routes, integration of governance obligations and evidence rules, and explicit proportionality for smaller platforms, would make this model more predictable without sacrificing its flexibility. Future research could test these conclusions empirically against larger samples of published judgments, particularly as generative-AI disputes multiply.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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